

# MISSOURI COURT OF APPEALS WESTERN DISTRICT

**DAVID BUSH, RESPONDENT  
vs.**

**SHELTER MUTUAL INSURANCE CO., APPELLANT**

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DOCKET NUMBER WD75696

Date: August 13, 2013

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Appeal from:

The Circuit Court of Jackson County, Missouri  
The Honorable Ann Mesle, Judge

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Appellate Judges:

Division Three: Joseph M. Ellis, P.J., Lisa White Hardwick and Cynthia L. Martin, JJ.

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Attorneys:

Stephen R. Bough, for Respondent

Matthew B. Heath, Co-counsel for Respondent

William C. Crawford, for Appellant

James P. Maloney, Co-counsel for Appellant

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## MISSOURI APPELLATE COURT OPINION SUMMARY

### MISSOURI COURT OF APPEALS WESTERN DISTRICT

**DAVID BUSH, RESPONDENT**

**v.**

**SHELTER MUTUAL INSURANCE CO., APPELLANT,**

WD75696

Jackson County, Missouri

Before Division Three Judges: Joseph M. Ellis, P.J., Lisa White Hardwick and Cynthia L. Martin, JJ.

On May 1, 2010, a vehicle negligently driven by Earnest Case collided with Respondent David Bush's 2008 Chevrolet Corvette. Respondent sustained bodily injury in excess of \$200,000.00 as a result of the collision. At the time of the accident, Case was insured by State Farm Insurance Company. His policy provided for \$25,000 in liability coverage per person, and Respondent and State Farm subsequently entered into a settlement agreement for that amount.

Respondent then sought underinsured motorist coverage ("UIM coverage") from Shelter. At the time of the accident, Respondent had four automobile insurance policies with Shelter – one covering the Corvette involved in the accident and three other policies each covering one of Respondent's three other vehicles. Each of the four Shelter policies provided \$50,000 in UIM coverage per person. Shelter refused to provide UIM coverage under the three policies not pertaining to the Corvette.

In 2012, Respondent filed suit against Shelter alleging that he was entitled to a total of \$200,000.00 in stacked UIM coverage under the four policies. Shelter contested Respondent's claim for \$200,000.00 in stacked UIM coverage on the basis that Respondent's three Shelter policies not pertaining to the Corvette contained an owned-vehicle exclusion provision that barred Respondent from receiving UIM coverage under those three policies. The exclusion provided that UIM "coverage does not apply: . . . [t]o any portion of **damages** resulting from **bodily injury** sustained while an **insured** is **occupying** a **motor vehicle owned** by **you**, a **relative**, or any **resident** of **your** household; unless that vehicle is the **described auto**." The Corvette was not a described auto on any of Respondent's three other Shelter policies.

Respondent and Shelter eventually filed competing summary judgment motions. In its summary judgment motion, Shelter contended that the owned-vehicle exclusion precluded Respondent from UIM coverage under Respondent's three Shelter policies not pertaining to the Corvette because, at the time of the accident, Respondent was occupying a vehicle he owned – the Corvette – that was not a described auto on the declarations pages of those three policies. In his cross-motion for summary judgment, Respondent acknowledged the exclusion but argued that the policies' "other insurance" clauses created an ambiguity as to whether stacking of the policies' UIM coverages was permitted and that ambiguity had to be resolved in Respondent's favor.

The circuit court ultimately granted Respondent's motion for summary judgment, concluding that the owned-vehicle exclusion was ambiguous and, thus, Respondent was

entitled to \$200,000 in stacked UIM coverage under his four Shelter policies. Shelter now appeals from the circuit court's grant of summary judgment in Respondent's favor.

**REVERSED AND REMANDED.**

**Division Three holds:**

(1) The circuit court erred in granting summary judgment in Respondent's favor because Shelter met its burden of establishing that the owned-vehicle exclusion applies given that Respondent was operating the Corvette at the time of the accident and his three Shelter policies not pertaining to the Corvette do not include the Corvette on their respective declarations page. Thus, because the owned-vehicle exclusion applies, no UIM coverage is available under three of Respondent's four Shelter policies to stack.

(2) The circuit court erred in granting summary judgment in Respondent's favor because the owned-vehicle exclusion does not conflict with the policies' "other insurance" clauses such that an ambiguity arises that would entitle Respondent to stack UIM coverage under his four Shelter policies. When read in context, the owned-vehicle exclusion does not take away excess UIM coverage promised to the insured in the policies' "other insurance" clauses in that the owned-vehicle exclusion does not act to take away or limit otherwise available UIM coverage under the policies on the basis that other UIM coverage is available to or has been recovered by the insured; rather, it simply and unambiguously precludes coverage for damages sustained while the insured is occupying a vehicle he owns that is not included on the policies' declarations pages. Accordingly, no ambiguity arises, and the policies must be enforced according to their terms, including the owned-vehicle exclusion.

**Opinion by: Joseph M. Ellis, Judge**

Date: August 13, 2013

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